IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1877 OF 2002

Natha Bhau Dabhade ...Petitioner
Vs.
The State of Maharashtra & Ors. ...Respondents

Mr. Ajit Ram Pitale Adv. for Petitioner
Ms. M.P. Thakur A.G.P. for State
Ms. Neeta Karnik Adv. for Respondent No.2.

CORAM: F.I.REBELLO & ROSHAN DALVI, JJ.
DATED: 22ND NOVEMBER , 2005

P.C.

1. Rule. Heard forthwith.

2. In the instant case Petitioner approached this Court against the order dated 7th September 2001. By that order the Respondent No.2 set aside the order dated 5th January 2001 issued by Respondent No.3 and the period between 28th April 1986 to 13th November 1990 during which period the Petitioner was under suspension came to be treated as break period and further held that the Petitioner would not be entitled to any backwages except subsistence allowances. The Respondent No.2 held that acquittal was not a clean acquittal. It is this order which is the subject matter of the present Petition.

3. At the hearing of this Petition on behalf of the Petitioner it is submitted that the Respondent

No.2 ought to have considered the entire Judgment and not proceeded on the footing that the acquittal was based on benefit of doubt, as the Judgment itself does not say so. Learned Counsel places reliance on the Judgment of Division Bench of this Court in Datta Vasudev Kulkarni vs. Director of Agriculture Maharashtra, 1984 Maharashtra Law Journal 406.

4. It is secondly submitted that the Respondent No.2 was the Appellate Authority and by the action of Respondent No.2 relieving the order of Respondent No.3 the Appellate Authority denied the statutory right which the Petitioner was entitled.

5. So far as the first contention is concerned the provision in the matter of wages for the period that the Petitioner was under suspension is governed by Rule 70 of the Maharashtra Civil Services Act (Joining time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules 1981. Under Rule 70 power is conferred on the authority competent for reinstatement to make a specific order regarding pay and allowance for the Government servants for the period of his absence from his duty including period of suspension and dismissal. Under Sub Rule 2 of the competent Authority orders for reinstatement, is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall,

subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled. In the instant case we are governed by Sub Rules 4 & 5 of Rule 70.

. We have considered the Judgment of this Court which acquitted the Petitioner. On a perusal of the Judgment, it is clear that the Judgment itself proceeds on the footing that after the acquittal of the co-accused who was accused No.2, to sustain the conviction against the Petitioner herein the charge had to be re-framed and also that the State has not preferred an Appeal against the acquittal of Accused No.2. It is in these circumstances the learned Judge came to the conclusion that the Appeal preferred by the Petitioner herein had to be allowed. It is therefore, clear that the acquittal is not honourable acquittal or of exoneration but on account of technicalities. It therefore, cannot be said that this acquittal is on merits or a clean acquittal. In these circumstances it was open to the Authorities concerned to proceed under Rule 70(4) r.w. Rule 5 of the Rules.

6. It is next submitted that the Respondent No.3 is the Appellate Authority. The Respondent No.2 by exercising powers under Section 8(3) of the Act Maharashtra Jeevan Pradhikaran, Mumbai denied an opportunity to the Petitioner of preferring statutory

appeal. Such a point has not been raised in the Petition. Apart from that it is always open to this Court in the exercise of its extra ordinary jurisdiction to examine the records and to interfere with the same if the order suffers from failure to exercise jurisdiction and or the order discloses an error apparent on the face of the record or that by denial of the purported approval, Petitioner has been seriously prejudiced.

. While disposing of point no.1 we have clearly held that it was open to the Authority concerned who have exercised that power considering that the Petitioner's case was not a case of acquittal on merits or clear acquittal. In these circumstances we do not find that the Petitioner was prejudiced by denial of any right to file an appeal. Considering the above we find no merits in this Petition.

. Consequently Rule discharged. There shall be no order as to costs.

(F.I.REBELLO J.)

(ROSHAN DALVI, J.)